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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/423,523	07/05/2000	KIYOTAKA ISHINO	ATOCM163	6838

7590 07/02/2002

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EXAMINER

SERGEANT, RABON A

ART UNIT	PAPER NUMBER
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1711

14

DATE MAILED: 07/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/423,523

Applicant(s)
Ishino et al.

Examiner
Rabon Sergeant

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1711



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Apr 30, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-10 and 12-15 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-10 and 12-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of:

- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____.
- ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- ☐ Interview Summary (PTO-413) Paper No(s). _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other:

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1. The request filed on April 30, 2002 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/423,523 is acceptable and a CPA has been established. An action on the CPA follows.
2. Claims 5-10 and 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Within claims 5-10, the language, "the polymer containing polyether chains", lacks antecedent basis. Furthermore, the subject matter of the claims does not appear to be relevant to the independent claim as amended.

The subject matter of claim 10 fails to further limit claim 4.

Claims 12-14 improperly depend from canceled claim 11.

Based upon the disclosure within page 2, it is questioned if applicants intended to recite "polyoxyethylene", rather than "polyoxyalkylene" within line 2 of claim 7.

3. Claims 4-9 and 15 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear if applicants' polymers may be polyethers lacking other structural or linking segments. For example, it is unclear if high molecular weight, exclusively polyether polymers can be used. Claims 7-9 seem to suggest that polymers containing only polyether

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segments may be used; however, applicants' disclosure at page 2 indicates that the polyoxyalkylene chains are linked via other polymer chains or "connecting regions".

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 4-10 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flesher ('024) or Werenicz et al. ('887) or WO 96/15174, each in view of Pia ('951).

The primary references disclose the production of water vapor permeable films, but are silent regarding the use of the films as covers for compost heaps. As discussed within applicants' Background of the Invention, the use of covers over compost heaps to prevent undue interference

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from weather conditions has long been known. Furthermore, Pia discloses that the covers over compost (used to spawn mushrooms) can be tailored or modified to control such conditions as oxygen, carbon dioxide, and water contents or exchange rates. Therefore, in view of the art recognized need to both protect compost piles from the elements and to control the environment of the compost, the position is taken that it would have been obvious to utilize gas permeable films, such as those disclosed by the primary references, as protecting covers for compost heaps.

6. Applicants' arguments have been considered; however, the position is taken that the teachings of the references in combination with the known state of the art would have rendered the use of permeable films to protect compost heaps obvious.

Any inquiry concerning this communication should be directed to R. Sargent at telephone number (703) 308-2982.

R. Sargent

July 1, 2002


RABON SERGENT
PRIMARY EXAMINER